NO. 79-1902

Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

JEAN C. ROSENBAUM,
Petitioner-Appellant, Pro Se

-vs-

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF TO RESPONDENT'S "MEMORANDUM FOR THE RESPONDENT IN OPPOSITION"

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NO. 79-1902

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October Term, 1979

JEAN C. ROSENBAUM, Petitioner, Pro Se

-vs-

COMMISSIONER OF INTERNAL REVENUE, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONER'S REPLY TO RESPONDENT'S "MEMORANDUM FOR THE RESPONDENT IN OPPOSITION"

Petitioner replies to the issues first raised in Respondent's MEMORANDUM FOR THE RESPONDENT IN OPPOSITION," hereinafter referred to as "MEMORANDUM."[1]

1. NON-COMPLIANCE WITH MAILING REQUIREMENTS. The Memorandum Footnote, Page 5, re-

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[1] The Memorandum is filed late and out of time. The "Petition for a Writ of Certiorari" is recorded as filed June 2, 1980. United States Supreme Court Rule 24.1 (effective July 1, 1970) allows the United States 30 days in which to file a Brief in Opposition, and the Memorandum, under this Rule, became due no later than July 22, 1980. Under new Supreme Court Rule 22

garding non-compliance of the 1973 Notice of Deficiency with the mailing requirements of 26 U.S.C. §6212(a) requires clarification due to Petitioner's numbering error, and she thanks the Respondent for calling this matter to the attention of the Court, and apologizes for any inconvenience. The year in issue is taxable year 1973 (not 1974 as Respondent believes possible). There is no evidence in the Record that the Notice of Deficiency for 1973 was properly served by Registered or Certified Mail as required by §6212(a), and this was first briefed in the United States Court of Appeals for the Seventh Circuit in

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(effective June 30, 1980), it appears the United States only has the usual 30 days in which to respond, and the MEMORANDUM became due by July 2, 1980. The Supreme Court Clerk has recorded the Memorandum as filed on July 23, 1980. Under either set of Rules, it was not timely filed; nor was an extension of time requested (or granted). Supreme Court Rule 33 (effective June 30, 1980) requires that the color of the cover must be grey -- it is tan. The Memorandum filed is not in conformity with Supreme Court Rules, and it should be denied.

Petitioner's Reply Brief, page 13.[2] Petitioner agrees with Respondent that a defect in mailing, if such a defect exists, would not give the Tax Court jurisdiction. An Opinion entered by the Tax Court under such conditions, then, could and should be voided. The issue in these circumstances becomes one of jurisdiction of the Tax Court, as well as the United States Court of Appeals. The legal axiom that jurisdictional issues can always be considered, even sua sponte, whether or not raised below, has frequently been affirmed by the Supreme Court of the United States; see: Federal Communications Commission v. National Broadcasting Company, Inc. 319 U.S. 239, 246 (1943); Guitierrez v. Waterman S. S. Co., 373 U.S. 206, 209 (1963); United States v. Storer Broadcasting Company, 351 U.S. 192, 197 (1956).

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[2]For the convenience of the Court, a copy of Petitioner's Reply Brief filed in the United States Court of Appeals has been lodged with the Clerk of the United States Supreme Court.

2. THE MEMORANDUM'S CITATIONS ARE NOT ON POINT. The issue is first raised by Respondent through implication when citing United States v. Maryland Savings-Share Ins. Corp., 400 U. S. 4, 6 (1970), that the closely intertwined emotional and legal ties involved in marriage and family can be likened to non-profit, mutual insurance companies that insure accounts of member associations. In the cited case, it was ruled that --

> "Sect. 501(c)(14)(B) of the Internal Revenue Code of 1954, which limits income tax exemption for nonprofit mutual insurers to those organized before September 1957, is not an arbitrary classification violative of due process requirements, Congress having had a rational basis for concluding that an extension of the cutoff date could adversely affect federal programs."

The case has no relationship to the standards and values established for families under State and Federal law.

All other cases cited in the Memorandum also are not on point with the instant Rosenbaum matter. They involve only (1) couples who are legally separated or

divorced, and whose decrees have NOT been reversed; (2) couples who are living together; or (3) couples who have signed property and/or other agreements, and the issues are NOT identical.

It is respectfully submitted that for the foregoing reasons, the MEMORANDUM FOR THE RESPONDENT IN OPPOSITION should be denied, and a Writ of Certiorari should issue to review the Judgment and Opinion of the Seventh Circuit.

Respectfully submitted,
Dated:

JEAN C. ROSENBAUM,*
Petitioner-Appellant, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

July 31, 1980

*See copy marked "Notarized" for signature.

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT

JEAN C. ROSENBAUM, being first duly sworn on oath, deposes and states she is the Petitioner-Appellant, Pro Se, in the aforestated cause, that she has read the foregoing PETITIONER'S REPLY BRIEF TO RESPONDENT'S "MEMORANDUM FOR THE RESPONDENT IN OPPOSITION" by her subscribed, that she knows the contents thereof, and the same is true in substance and in fact.

Dated: _____

_____
JEAN C. ROSENBAUM,*
Petitioner-Appellant, Pro Se

I, _____, a Notary Public for and in the State and County aforesaid, do hereby certify that the foregoing document was sworn and subscribed to before me by Jean C.Rosenbaum this _____ day of July, 1980.

_____
NOTARY PUBLIC*

My commission expires: _____

*See copy marked "Notarized" for signatures and verification.

No. 79-1902
IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1979

JEAN C. ROSENBAUM,
Petitioner-Appellant, Pro Se

-vs-

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee

ON PETITION FOR A WRIT OF CERTIORARI TO THE
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NOTICE OF FILING

To: Solicitor General
Department of Justice
Washington, D. C. 20530

PLEASE TAKE NOTICE that on July 31, 1980, I filed with the Clerk of the Supreme Court of the United States, Washington, D. C. 20543, through United States Certified Mail, Return Receipt Requested, 40 copies of PETITIONER'S REPLY BRIEF TO RESPONDENT'S "MEMORANDUM FOR THE RESPONDENT IN OPPOSITION," with Proof of Service, five copies of which are herewith served upon you. Also lodged with the Court through this same mailing is one copy of "REPLY BRIEF OF PETITIONER-APPELLANT, JEAN C. ROSENBAUM" previously filed with the United States Court of Appeals for the Seventh Circuit.

JEAN C. ROSENBAUM,*
Petitioner-Appellant, Pro Se

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

PROOF OF SERVICE

I, JEAN C. ROSENBAUM, being first duly sworn on oath, depose and state I served this Notice of Filing with five copies of PETITIONER'S REPLY BRIEF TO RESPONDENT'S "MEMORANDUM FOR THE RESPONDENT IN OPPOSITION" with Proof of Service, by mailing same via the United States Mail, Certified Mail, Return Receipt Requested, proper postage prepaid, to: Solicitor General, Department of Justice, Washington, D.C. 20530. This mailing took place on July 31, 1980, in the United States Post Office at Clark and VanBuren Streets, Chicago, Illinois, before 5:00 PM.

I further depose and state that all parties required to be served with this document have been served. Dated:

JEAN C. ROSENBAUM, *
Petitioner-Appellant, Pro Se

I, _____, a Notary Public for and in the State and County aforesaid, do hereby certify that the foregoing document was sworn and subscribed to before me

by Jean C. Rosenbaum this _____ day of July, 1980.

_____
Notary Public*

My commission expires: _____

*See copy marked "Notarized" for signatures and verification.

Jean C. Rosenbaum,
Petitioner-Appellant, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)